

INTEROFFICE MEMORANDUM

DATE: November 16, 2012 **PHONE:** (909) 387-6979

FROM: Karen Bell
Chief Deputy District Attorney
Central Juvenile Division

TO: Michael Ramos,
District Attorney

Mike Fermin,
Assistant District Attorney
For Administrative Services

Gary Roth,
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For Criminal Operations

SUBJECT: OFFICER INVOLVED FATAL SHOOTING

Involved Party – Sergeant Michael O'Brien, Deputy Ismael Diaz, Deputy Perea,
Dep. Larry Scott and Reserve Deputy Dan Lynch, San Bernardino
Sheriff's Department;

Suspect – Kenneth Paul Muñoz Jr. – (D.O.B. 10/29/1980);

Date of Incident – October 26, 2011, 1930 hours;

Investigating Agency – Detective J. Moody, San Bernardino Sheriff Department,
Homicide;

DR # 141104009

DA Star number – 2012-17077

PREAMBLE

The summary of this incident was completed by reviewing police reports submitted by the San Bernardino Sheriff's Department compiled by case agent, Det. J. Moody. Included in the reports are 8 CDs of interviews of witnesses, a CAD print out, and photographs of the crime scene and autopsy. A visit to the crime scene was also done in the company of Det. A.J. Gilberterra at the location where deputies initially responded and where the shooting occurred.

FACTUAL SUMMARY

On October 26, 2011 at approximately 7:03 p.m. a call was made to the Sheriff's Department about a domestic disturbance at 35279 Avenue B in the city of Yucaipa. The caller, Witness #1, reported Kenneth Muñoz Jr. (referred to as Kenneth Jr. hereafter) had a company vehicle and would not return it. The vehicle, a pick-up truck, was owned by witness #1's company and was parked to the rear of the residence of Kenneth Jr.

Deputy Larry Scott and Reserve Deputy Dan Lynch went to the location, found the company truck in the back yard of the residence and Kenneth Jr. nearby. Kenneth Jr. would not respond to Dep. Scott's questions and seemed focused on his cell phone. Dep. Scott noticed that Kenneth Jr. had some sort of weapon in his right hand and some other type of weapon in the right back shoulder area of his shirt. The weapon was later recovered near the fence Kenneth Jr. jumped over at the onset of this investigation. It was a black plastic sprinkler head with a piece of metal jammed into the open pipe end. The metal piece was pulled out of the pipe and contained a vehicle gas cap key and small piece of foil with white residue on it.

Within minutes, Kenneth Jr. ran across the back yard west bound. Reserve Deputy Lynch deployed a Taser at him. One weapon was dropped as Kenneth Jr. jumped over a fence into the neighbor's yard. It is unknown if the Taser hit Kenneth Jr.

Dep. Scott told radio dispatch they were searching for Kenneth Jr. but could not locate him. The search for Kenneth Jr. continued for approximately 30 minutes in the surrounding residential area when a neighbor called radio dispatch to report Kenneth Jr. was in the back yard at 35284 Avenue B. (This home is across the street from the residence where deputies first responded.)

Dep. Scott crossed the street, went into the backyard and tried again to detain Kenneth Jr. but Kenneth Jr. did not comply and ran in a westerly direction through several backyards. Dep. Scott did not use his Taser.

Additional Deputies had arrived to help locate and detain Kenneth Jr. Dep. Scott finally found Kenneth Jr. hiding in a tree in the backyard of 35264 Avenue B. Scott ordered him to lie prone on the ground until other deputies arrived in the yard. Kenneth Jr. complied with Dep. Scott's commands and remained prone under the tree until additional deputies arrived.

Three deputies entered the yard which was dark and very overgrown with trees and bushes. Dep. Perea bent down to handcuff Kenneth Jr. with Sgt. O'Brien and Dep. Diaz standing nearby as cover. While being cuffed, Kenneth Jr. got on his knees, punched Dep. Perea in the face several times and began to resist being

handcuffed. As the deputy and Kenneth Jr. struggled on their knees, Kenneth Jr. grabbed Dep. Perea's pistol from his holster.

Dep. Perea immediately screamed Kenneth Jr. had his pistol. The two struggled for the weapon and it discharged. No one was hit. Sgt. O'Brien and Dep. Diaz were within feet of the struggle but could not help because they did not know who had possession of the pistol and Dep. Perea and Kenneth Jr. had their arms wrapped around each other. Within seconds after the gun discharged, Dep. Perea moved away from Kenneth Jr. enough for Sgt. O'Brien and Dep. Diaz to fire at Kenneth Jr. At the time they fired, neither officer knew who had Perea's pistol nor could they see Kenneth Jr.'s hands. Dep. Perea recovered his pistol but could not fire because the magazine had fallen out of the gun.

Kenneth Jr. was hit multiple times and died at the scene within minutes. Dep. Perea suffered swelling and redness to his cheek where he was punched and his right hand was sore and swollen from the movement of the slide on his pistol when it fired. No other deputies were injured.

WITNESS STATEMENTS

Deputy Larry Scott

Dep. Scott was interviewed by Det. Myler on October 27, 12 at 0034 hours. Dep. Scott stated he had gone to 35279 Avenue B, Yucaipa regarding a disturbance of the peace. He was told that Kenneth Jr. was refusing to return a pickup truck to Witness #1, the reporting party. Dep. Scott arrived about 7:15 p.m., went to the rear alley, spoke to Witness #1 about the truck and observed Kenneth Jr. in the area.

Kenneth Jr. would not talk to Dep. Scott or respond to any commands. Kenneth Jr. had something under his long sleeved shirt and an unknown object in his hand. Dep. Scott ordered Kenneth Jr. to drop the weapons and lay on the ground. Kenneth Jr. jumped a fence, ran into the neighbor's yard and disappeared from view. Dep. Scott and Dep. Lynch tried to stop Kenneth Jr. by firing a Taser but were unsuccessful. Both deputies lost sight of him.

Some minutes later a neighbor called dispatch to report Kenneth Jr. was in his backyard. Dep. Scott went to 35276 Avenue B, found Kenneth Jr. in the yard and tried again to detain him. Kenneth Jr. refused to comply and fled west bound through several backyards. Forty King (the Sheriff's helicopter) was overhead and located Kenneth Jr. in the backyard of 35264 Avenue B. Dep. Scott went to the adjacent yard along the fence line and issued commands to Kenneth Jr. to lie prone in the yard which he did.

Three deputies then walked up to Kenneth Jr. and Dep. Perea knelt down to handcuff him. Kenneth Jr. spun around, pushed off Dep. Perea and the two

struggled physically. Dep. Scott ordered Kenneth Jr. to stop but he did not. Dep. Scott heard Dep. Perea yell "He's got my gun!" several times and heard it discharge. Dep. Scott could only see glimpses of the gun during the struggle. He heard additional gun shots which sounded like two different weapons being fired within about one second of the first shot. Dep. Scott did not fire his weapon. The area where this occurred was unlit and heavily over grown so his vision was limited although the parties were only about 10 feet away.

Reserve Deputy Daniel Lynch

Dep. Lynch was interviewed on Oct 27, 12 at 0151 hours by Det. R. Ford. Dep. Lynch said he assisted Dep. Scott on the call at 35279 Avenue B at about 7:15 p.m. He said Kenneth Jr. was in the rear yard near the truck in question but refused to respond to any questions or commands made by Dep. Scott.

Kenneth Jr. picked up an object later identified as a knife handle with a sprinkler head attached from the ground and refused to drop it causing Dep. Lynch to take his Taser out. Kenneth Jr. then dropped it, jumped over the fence and disappeared into the neighbor's yard. Dep. Lynch and Dep. Scott could not find Kenneth Jr. until a neighbor reported to dispatch that he was in a back yard across the street.

Dep. Lynch went to the house across the street along with other deputies to find Kenneth Jr. He did see Kenneth Jr. with a different shirt on running through a back yard and attempted to tase him unsuccessfully. Kenneth Jr. kept running going out of sight through yards.

Dep. Lynch was not present at the rear of 35264 Avenue B when Kenneth Jr. was finally located and never fired his weapon.

Deputy J. Perea

Dep. J. Perea was interviewed on Oct 27, 12 at 0220 hours by Det. W. Doemner. He related the following information. Dep. Perea was in plain clothes in Yucaipa looking for a parolee when he heard over the radio that Forty King had located a fleeing subject in a back yard. He assigned himself to the call to help other deputies take the suspect into custody.

Dep. Perea met Dep. Diaz and Sgt. O'Brien in front of 35264 Avenue B and discussed how to approach Kenneth Jr. who was lying prone in the rear yard as commanded by Dep. Scott. Dep. Perea would be first in line assigned to hand cuff the suspect, Dep. Diaz would have a bean bag shot gun for less lethal use of force and Sgt. O'Brien would have his firearm drawn in case lethal force was required.

The three deputies walked single file into the yard which was overgrown with bushes and dark. The vegetation was so heavy they had to enter the yard

hunched over because of tree branches. The only sources of light were flash lights and Taser lights so visibility was very limited.

When Dep. Perea saw Kenneth Jr., he was prone in the dirt. Dep. Perea knelt down, holstered his Taser and started to cuff Kenneth Jr. Suddenly Kenneth Jr. jumped up, hit him several times in the face and the two began to struggle. Dep. Perea wrapped his arms around Kenneth Jr. to force him back on the ground while still on his knees. Neither man could stand due to the over growth in the area. As they struggled, Dep. Perea felt pressure on his holster and his raid vest lifting as his gun started coming out of his holster.

Dep. Perea released his grip on Kenneth Jr.'s torso, screamed to his fellow deputies that Kenneth Jr. had the gun and struggled to block the weapons' movement. Kenneth Jr. now had the gun in his right hand so Dep. Perea grabbed the slide of the gun. The gun discharged and Perea felt the slide of the firearm strike and pinch his right palm. He finally got his gun free from Kenneth Jr.'s grasp and moved away. Almost immediately he heard additional gun shots which were not from his weapon. He then yelled he had his gun.

He heard several shots at the time he recovered his weapon and saw Kenneth Jr. was still fighting and moving on the ground. He tried to fire his weapon but the magazine had fallen out. Other than one discharge during the struggle for the weapon, his gun was not fired.

His weapon, a Glock 21 .45 caliber, was collected by Crime Scene Specialist C. Findahl and had one chambered .45 caliber Winchester round and 12 rounds in magazine # 1. Three other magazines each contained 13 rounds.

Dep. Perea said he was completely surprised by Kenneth Jr. jumping up and hitting him. During the struggle for the gun, he was very scared and felt he was in a fight for his life and that of his colleagues

Dep. Perea did not know Kenneth Jr. but had spoken to Witness #1 about earlier problem with Kenneth Jr. and the company vehicles. When he responded to the call he did not connect the two individuals.

Dep. Perea had swelling and redness on the left cheek, and a sore, swollen right hand palm, His voice was hoarse from screaming and his arms still tired and sore from the physical struggle.

Dep. Ismael Diaz

Dep. Diaz was interviewed on Oct 27, 12 at 0133 by Det. Doemner and gave the following statements. Dep. Diaz was at briefing at the Yucaipa station when he learned that Dep. L. Scott was out with a stolen vehicle recovery and someone had run away. He left the station to assist Dep. Scott.

When he arrived at the residence on Avenue B he learned Kenneth Jr. fled on foot and Dep. Scott and Dep. Lynch were looking for him. He was told Kenneth Jr. had dropped one weapon as he went over a fence but might have an additional weapon under his shirt. Dep. Diaz carried the bean bag shot gun for use of less lethal force in apprehending Kenneth Jr.

Information from neighbors and Forty King revealed Kenneth Jr. was running from back yard to back yard across the street. Dep. Diaz ran after Kenneth Jr. westbound on Avenue B and confronted him in a driveway but the suspect refused to stop. Dep. Diaz shot one bean bag at Kenneth Jr. as he climbed over a fence but Diaz was unsure if he hit Kenneth Jr.

Dep. Diaz met with Dep. Perea and Sgt. O'Brien in the driveway of 35264 Avenue B when they learned that Kenneth Jr. was hiding in a tree in the back yard and Dep. Scott had ordered Kenneth Jr. to lie prone. Dep. Diaz, Dep. Perea and Sgt. O'Brien walked into the back yard in single file approaching Kenneth Jr. who was lying face down on the ground. Dep. Diaz did not have a flashlight, having lost it earlier in the foot chase, and he could not see Kenneth Jr. initially. The area was very over grown and lighting was limited.

Dep. Diaz watched as Dep. Perea went up to Kenneth Jr., and knelt down to handcuff him. Suddenly Kenneth Jr. turned, jumped up, and starting fighting with Dep. Perea. No one could stand up in this area due to low hanging tree branches. Sgt. O'Brien kicked Kenneth Jr. once and Dep. Diaz tried to shoot the bean bag shotgun twice but it would not fire. He then heard Dep. Perea yell "He has my gun, he has my gun!"

Dep. Diaz could not shoot his own weapon because Dep. Perea and Kenneth Jr. were struggling. He heard one shot, then a second and possibly third shot and when Dep. Perea moved away from Kenneth Jr., he fired approximately four rounds at Kenneth Jr. Kenneth Jr. was on the ground with his hands under him clutching his chest. Dep. Diaz thought Kenneth Jr. still had Dep. Perea's gun when he fired.

At the time he shot Kenneth Jr. he was about 3-5 feet away and still holding the bean bag shot gun. Dep. Diaz did not mention hearing Dep. Perea say the gun had been recovered.

Dep. Diaz' weapon was collected by Crime Scene Specialist C Finhahl. The weapon was a Glock Model 21 .45 caliber. It had one chambered .45 caliber Winchester and 2 rounds in Magazine # 1 at the time of examination. Two other magazines from his utility belt contained 13 rounds each.

Sgt. Michael O'Brien

Sgt. O'Brien was interviewed by Det. G. Myler on Oct 27, 12 at 0310 hours and gave the following statements. Sgt. O'Brien was at the Yucaipa Sheriff's Station

at 1900 hours preparing for his shift briefing when he learned that a foot pursuit was in progress and Dep. Scott was requesting help. He left the station for Avenue B to help along with Dep. Diaz who drove a separate vehicle.

Upon arrival at 35279 Avenue B, he learned that Kenneth Jr. had fled on foot and his whereabouts were unknown. The initial call had been made by Witness #1 and the stolen truck was parked to the rear of the residence. He learned from Witness #1 that Kenneth Jr. had been fired from his job and his behavior had been very odd lately.

Reports from neighbors on Avenue B and Forty King finally led to the discovery of Kenneth Jr. hiding in a tree in the back yard of 35264 Avenue B. Dep. Scott who was in an adjacent yard had located Kenneth Jr. and commanded him to lie prone until other deputies could take him into custody.

Sgt. O'Brien quickly met with Dep. Perea and Deputy Diaz in the driveway of the residence and planned their tactical entry into the yard. Dep. Perea was first in line with Dep. Diaz assigned use of less lethal force (the bean bag shot gun) and Dep. Perea to take custody. Sgt. O'Brien would be prepared to use his duty firearm if necessary.

The area in the yard was dark with dense, low hanging brush. Kenneth Jr. seemed compliant initially. Dep. Scott was on the other side of the fence separating the two yards with his Taser focused on Kenneth Jr. commanding him to remain prone.

He watched as Dep. Perea approached Kenneth Jr., placing his knee on Kenneth Jr.'s right shoulder and upper back to begin the hand cuffing process. Kenneth Jr. immediately elevated himself off the ground, turned his body toward Dep. Perea and wrapped his arms around the deputy. Dep. Perea was knocked off balance and back. Kenneth Jr. then punched Dep. Perea several times in the face and O'Brien moved forward and kicked him once. At the same time, Dep. Perea screamed "He has my gun! He has my gun!"

Sgt. O'Brien moved behind Kenneth Jr. and as the two men continued to struggle he could see Dep. Perea's gun was not in the holster. Sgt. O'Brien could not safely shoot Kenneth Jr. until Dep. Perea was out of danger while at the same time he was very aware everyone present was in danger of being shot by Kenneth Jr. Sgt. O'Brien then heard gunshot (Dep. Perea's) and initially thought Dep. Perea had been shot. Dep. Perea moved back and Sgt. O'Brien pressed his firearm against the center of Kenneth Jr.'s back and fired once.

Kenneth Jr. fell to the ground on his side but Sgt. O'Brien still could not see his hands nor did he know where Dep. Perea's gun was. As Kenneth Jr. attempted to get up, Sgt. O'Brien shot him a couple of times. Simultaneously he heard shots being fired which he thought might be from other deputies. When the

shooting stopped he still did not know where Dep. Perea's gun was until he heard Dep. Perea say he had his weapon.

Sgt. Obrien's weapon was collected by Crime Scene Specialist C Findahl. The weapon was a Glock Model 34 9 mm with a stream TLR tactical light. It contained one chambered 9mm round head stamped WCC+P+09 and magazine #1 contained 16 rounds of 9mm WCC+P+. Magazine # 2 and 3 each contained 18 rounds.

Witness #2

Witness #2 was a personal friend of Kenneth Jr. and present in the neighborhood on the date of the shooting. He had been living with Kenneth Jr. in the residence at 35279 Avenue B for the past few days. He was away from the residence when the Sheriff's deputies first arrived to investigate the theft of the truck. Witness #2 went across the street to a neighbor's home and saw Kenneth Jr. seated on the back porch in a tan colored shirt. Witness #2 asked Kenneth Jr. what was going on and was told "I'm dead." Witness #2 asked Kenneth Jr. for the keys to the truck and then gave the keys to a deputy in the area. He did not tell the deputy Kenneth Jr. was in the neighbor's backyard.

He remained in the area on the street and observed the helicopter overhead and at one point saw Kenneth Jr. running west bound in a yard on the north side of Avenue B. He did not see what occurred in the back yard of 35264 Avenue B but did hear popping sounds.

Witness #1

Witness #1 called the Sheriff's department when Kenneth Jr. would not return a company owned business truck which was parked to the rear of 35279 Avenue B, Yucaipa. He wanted the vehicle back and advised Kenneth Jr. was not acting right. He did not see the shooting.

Witness #3

Witness #3 lives on Avenue B near Kenneth Jr.'s residence. He knew Kenneth Jr. and said he saw Kenneth Jr. in his back yard the evening of October 26, 2012. Kenneth Jr. made odd statements that made no sense. Kenneth Jr. had no shirt on and Witness #3 loaned him a tan shirt to wear. Kenneth Jr. emptied his pockets of change and left a red backpack, an orange-shirt, Monster drink can, two keys and baseball hat on Witness #3's back porch.

Witness #3 was concerned that Kenneth Jr. was hiding from the deputies so he went to his garage and called Sheriff's dispatch. When deputies arrived in his yard, Kenneth Jr. immediately began to run west through adjacent yards with the deputies in pursuit. He did not see the shooting.

Witness #4

Witness #4 was home at 35264 Avenue B, Yucaipa on October 26, 2012 with her mother and child. She heard a helicopter flying overhead and saw sheriff's deputies in the immediate area. At about 7:30 p.m. she heard men's voices and saw flashlights moving down her drive way. She heard a demand to "give me the gun" but could not tell who was speaking. She then heard gun shots and immediately looked out the window and saw Kenneth Jr. lying on the ground under an apple tree with about five deputies standing around him.

Witness #5

Witness #5 was also at home at about 7:30 pm with her daughter (Witness #4) and grandchild on Avenue B in Yucaipa. She heard a helicopter flying overhead and saw several police cars parked on the street. It appeared to her that the deputies were looking for someone.

At about 7:30 p.m. she saw several deputies with someone in her back yard. She explained that the sun was down and there was no porch light on at the time. Then she heard a "pop" and something about a gun but she could not hear exactly what was being said. She heard additional "pops" and saw blood on the shirt of the man the deputies were talking to. She knew Kenneth Jr. but had not spoken to him in about 12 years and did not know he was the individual in her back yard.

AUTOPSY PROTOCOL

Dr. Mark A. Fajardo, M.D. conducted an autopsy on Kenneth Munoz Jr. on October 28, 2012. His examination of the body revealed 12 separate gunshot wounds to the body. He concluded the cause of death was multiple gunshot wounds. The locations of each are summarized as follows:

1. One on lower left abdomen
2. Two on upper right back
3. One contact wound on right back
4. One on left side of the neck
5. Two on upper left arm
6. Two on upper right chest
7. Three on front left shoulder

Samples of blood were taken at the time of the autopsy and analysis conducted by Bio-tox laboratories. The analysis revealed the presence of amphetamines, methamphetamine, hydrocodone, opiates and hydromorphone.

CRIME SCENE EVIDENCE

Forensic Specialist Kathy Schnell collected evidence at the crime scene on October 26, 2011 under the direction of Det. J Moody. The following is a summary of some of the items collected.

1. 10 Winchester 45 Auto fired cartridge casings
2. 2 WCC+P+ 09 fired cartridge casings
3. 3 less lethal shotgun shells (expended from the bean bag shotgun)

On Nov 2, 2011 Det. J Moody met with Dep. J Sanchez at the Sheriff's Range to have her examine the duty holster worn by Dep. Perea at the time of the shooting. The holster was not modified and intact but worn and did not have much retention. The top strap to the holster, called the hood, holds the firearm in the holster. Upon examination of the hood, it moved forward when moved only 1/8", which should not occur. The holster appeared to be damaged by continual use.

STATEMENT OF APPLICABLE LAW

The legal doctrine of self-defense is codified in Penal Code Sections 196 through 199. Those sections state in pertinent part: Where the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and, he has a right in defense of his person to repel the assault upon him even to take the life of his adversary. (People v. Collins (1961) 189 CA 2d 575, 1 Cal Reptr. 504)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the defendant act out of that fear (Penal Code Section 19; People v. Clark (1982) 130 CA 3d 371, 277, 181 Cal. Reptr. 682)

CAL CRIM 3470

RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

Self-defense is a defense to the unlawful killing of a Human Being. A person is not guilty of that/those crimes if (he/she) used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The defendant reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury [or was in imminent danger of being touched unlawfully];
2. The defendant reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The defendant used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The person must have believed there was imminent danger of violence to himself/herself or someone else. The person's belief must have been reasonable and he/she must have acted because of that belief. A person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the person used more force than was reasonable, the person did not act in lawful self-defense or defense of another.

When deciding whether a person's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

The person's belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

CAL. PENAL CODE SECTION 835a

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

ANALYSIS

This is a case that should have ended with the return of the truck to the aggrieved party and an amicable resolution of the dispute over possession. When law enforcement officers arrived and tried to convince Kenneth Jr. to give back the truck, he would not comply with any verbal commands and ran away escalating a family disturbance over possession of a truck call to a foot pursuit, use of non-lethal force and ultimately deadly force.

The officers had cause to pursue Kenneth Jr. when he failed to cooperate and would not respond to questions. They had a duty to not only to investigate a possible auto theft but his conduct was out of the ordinary and he might have posed a danger to himself or others. Despite repeated efforts to convince him to stop running he did not.

When Kenneth Jr. finally stopped, and laid face down on the ground in a yard the chase seemed to be over. The officers approached with great care, based on his earlier conduct, to insure their safety, the public's and his. Unfortunately at that moment the circumstances changed radically. He fought the arresting officer and got control of his gun. In such circumstances officers are entitled to use deadly force in protection of themselves or others. Kenneth Jr. left them little alternative but to use their last tool -deadly force.

CONCLUSION

Under the facts, circumstances and the applicable laws of self-defense and defense of others, the use of deadly force by Dep. I. Diaz and Sgt. M. O'Brien was in response to an apparent and immediate threat of death or great bodily injury to them and to Deputy Perea and was therefore legally justified.

Respectfully submitted on behalf of the District Attorney for the County of San Bernardino:

Karen Bell
Chief Deputy District Attorney

Date

Gary S. Roth
Assistant District Attorney for Criminal Operations

Date